JS 44 (Rev. 06/17)

# **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

purpose of initiating the offit of	TOUROU BROOK. TOURS IN THE TOUR	TOTAL ON THEM TAKE	1 1111010	1411.9					
I. (a) PLAINTIFFS				DEFENDANT					
ZURICH AMERICAN INSURANCE COMPANY a/s/o BASF CORPORATION				M.V. YM UPSURGENCE, in rem, BDP INTERNATIONAL and HAPAG-LLOYD AKTIENGESSELLSHAFT, in personam					
(b) County of Residence of First Listed Plaintiff Illinois (EXCEPT IN U.S. PLAINTIFF CASES)				County of Residence of First Listed Defendant Philadelphia  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.					
(c) Attorneys (Firm Name,	Address, and Telephone Number	)		Attorneys (If Known					
II. BASIS OF JURISD	ICTION (Place an "X" in Oi	ne Box Only)		TIZENSHIP OF I		AL PARTIES			
U.S. Government Plaintiff		iot a Party)			PTF DEF	Incorporated or Pri		r Defenda PTF - 4	DEF
D 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizenshi)	v of Parties in Item III)	Citize	en of Another State	<b>X</b> 2	Incorporated and F of Business In A		<b>X</b> 5	<b>(1)</b> 5
				en or Subject of a (Creign Country	3 3 3	Foreign Nation		<b>a</b> 6	D 6
IV. NATURE OF SUIT	Γ (Place an "X" in One Box Oni ▼ <b>TO</b> l	(v) PTS	Single Property	DRFEITURE/PENALTY		c here for: Nature o	of Suit Code Des		
☐ 110 Insurance	PERSONAL INJURY    310 Airplane   315 Airplane Product Liability   320 Assault, Libel & Slander   330 Federal Employers' Liability   340 Marine   345 Marine Product Liability   350 Motor Vehicle   355 Motor Vehicle   355 Motor Vehicle   360 Other Personal Injury   362 Personal Injury   Medical Malpractice   CIVIL RIGHTS   441 Voting   442 Employment   443 Housing/ Accommodations   345 Amer. w/Disabilities - Employment	PERSONAL INJUR:  365 Personal Injury - Product Liability Product Liability Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPER 370 Other Fraud 371 Truth in Lending Nother Personal Property Damage Product Liability PRISONER PETITION Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other:	XTY	5 Drug Related Seizure of Property 21 USC 881 0 Other  LABOR 0 Fair Labor Standards Act 0 Labor/Management Relations 0 Railway Labor Act 1 Family and Medical Leave Act 0 Other Labor Litigation 1 Employee Retirement Income Security Act  IMMIGRATION 2 Naturalization Applicatio	422 App   423 Wid   28 U   423 Wid   28 U   423 Wid   423 Wid   425 Wid	eal 28 USC 158 ddrawal JSC 157  RTY RIGHTS  yrights nt Abbreviated Drug Application lemark LSECURITY (1395ff) k Lung (923) C/DIWW (405(g)) D Title XVI	□ 375 False Cla □ 376 Qui Tann	ims Act (31 USC) pportions d Banking e on f Influence organization f Credit TV //Commoco tutory Act ral Acts ental Matt of Inform e organization f Properties of Matt of Inform on ality of onality of	ed and ons dities/ tions ters ation
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Proceeding Sta		Appellate Court	Reop		er District	Litigation Transfer	- I	itigation irect File	1 -
VI. CAUSE OF ACTION	ON 28 U.S.C. § 1333 Brief description of cau			. <u>VATURE_V</u> VII <u></u>	unies uniess ai	versuy).			
VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		DI	DEMAND \$ CHE		HECK YES only in URY DEMAND:	ECK YES only if demanded in complaint:  RY DEMAND:			
VIII. RELATED CASI IF ANY	(See instructions):	JUDGE			DOCKE	ET NUMBER			
DATE 2/7/19		SIGNATURE OF ATI	ORNEY O	F RECORD			··· ·· · · · · · · · · · · · · · · · ·		
FOR OFFICE USE ONLY									<del>,</del>
RECEIPT# AN	<b>MOUNT</b>	APPLYING IFP		JUDGE		MAG. JUDO	GE.		

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### UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM (to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff:	1299 Zurich Way, Schaumberg, IL 60199
Address of Defendant: 510 Walnut Street	, Philadelphia, PA 19106; 399 Hoes Lane, Piscataway, NJ 08854
Place of Accident, Incident or Transaction:	
·	
RELATED CASE, IF ANY:	
Case Number:	Judge: Date Terminated:
Civil cases are deemed related when Yes is answered	to any of the following questions:
Is this case related to property included in an ear previously terminated action in this court?	lier numbered suit pending or within one year Yes No
<ol> <li>Does this case involve the same issue of fact or g pending or within one year previously terminated</li> </ol>	
<ol> <li>Does this case involve the validity or infringeme numbered case pending or within one year previous</li> </ol>	
4. Is this case a second or successive habeas corpus case filed by the same individual?	s, social security appeal, or pro se civil rights  Yes  No
this court except as noted above.	s / 🔀 is not related to any case now pending or within one year previously terminated action in
DATE: 2/7/19	84707
	Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)
CIVIL: (Place a √ in one category only)	
A. Federal Question Cuses:	B. Diversity Jurisdiction Cases:
<ul><li>Indemnity Contract, Marine Contract, and A</li><li>ELA</li></ul>	All Other Contracts  1. Insurance Contract and Other Contracts  2. Airplane Personal Injury
3. Jones Act-Personal Injury 4. Antitrust	3. Assault, Defamation
5. Patent	5. Motor Vehicle Personal Injury
6. Labor-Management Relations 7. Civil Rights	6. Other Personal Injury (Please specify): 7. Products Liability
8. Habeas Corpus	8. Products Liability – Asbestos
9. Securities Act(s) Cases 10. Social Security Review Cases	9. All other Diversity Cases (Please specify):
11. All other Federal Question Cases (Please specify):	
(The effect of	ARBITRATION CERTIFICATION of this certification is to remove the case from eligibility for arbitration.)
	ounsel of record or pro se plaintiff, do hereby certify:
	), that to the best of my knowledge and belief, the damages recoverable in this civil action case
exceed the sum of \$150,000.00 exclusive of	interest and costs:
Relief other than monetary damages is soug	nt.
DATE:	
Note: A Color of the Color of t	Attorney-at-Law / Pro Se Plaintiff Attorney I.D. # (if applicable)
NOTE: A trial de novo will be a trial by jury only if there has	s been compliance with F.R.C.P. 38.

# Case 2:19-cv-00562-CFK Document 1 Filed 02/07/19 Page 3 of 9

# FOR THE EASTERN DISTRICT OF PENNSYLVANIA

# DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff:	1299 Zurich Way, Schaumberg			
Address of Defendant: 510 Walnut Stree	et, Philadelphia, PA 19106; 399 Ho	pes Lane, Piscataway, NJ 08854		
Place of Accident, Incident or Transaction:				
RELATED CASE, IF ANY:				
Case Number:	Judge:	Date Terminated:		
Civil cases are deemed related when Yes is answered	I to any of the following questions:			
Is this case related to property included in an eapreviously terminated action in this court?	rlier numbered suit pending or within one year	Yes No V		
Does this case involve the same issue of fact or pending or within one year previously terminate	grow out of the same transaction as a prior suit ed action in this court?	Yes No 🗸		
Does this case involve the validity or infringem numbered case pending or within one year prev		Yes No 🗸		
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights  Yes  No  Ver  No  No  Ver  No  No  Ver  No  No  No  Ver  No  No  No  No  No  No  No  No  No  N				
I certify that, to my knowledge, the within case this court except as noted above.	,			
DATE: 2/7/19	Attorney-at-Law / Pro Se Plaintiff	84707  Attorney I.D. # (if applicable)		
CIVIL: (Place a √in one category only)				
A. Federal Question Cases:	B. Diversity Jurisdiction (			
<ul> <li>✓ 1. Indemnity Contract, Marine Contract, and</li> <li>✓ 2. FELA</li> </ul>	2. Airplane Person	, , , , , , , , , , , , , , , , , , ,		
3. Jones Act-Personal Injury 4. Antitrust	3. Assault, Defama	ation		
5. Patent	😼 🔲 5. Motor Vehicle F	Personal Injury		
6. Labor-Management Relations 7. Civil Rights	7. Products Liabili			
8. Habeas Corpus 9. Securities Act(s) Cases	8. Products Liabili 9. All other Divers	ity – Asbestos		
10. Social Security Review Cases	9. All other Divers (Please specify): _	siry Cases		
11. All other Federal Question Cases (Please specify):				
(The offere	ARBITRATION CERTIFICATION			
(The effect	ARBITRATION CERTIFICATION  t of this certification is to remove the case from eligibility	for arbitration.)		
		for arbitration.)		
I,,c	of this certification is to remove the case from eligibility counsel of record or pro se plaintiff, do hereby certify:  2), that to the best of my knowledge and belief, the definition of the desired in			
I,, c  Pursuant to Local Civil Rule 53.2, § 3(c) (2	t of this certification is to remove the case from eligibility, counsel of record or pro se plaintiff, do hereby certify:  2), that to the best of my knowledge and belief, the diffinterest and costs:			
Pursuant to Local Civil Rule 53.2, § 3(c) (2 exceed the sum of \$150,000.00 exclusive of	t of this certification is to remove the case from eligibility, counsel of record or pro se plaintiff, do hereby certify:  2), that to the best of my knowledge and belief, the definterest and costs:  ght.			

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

# CASE MANAGEMENT TRACK DESIGNATION FORM

Telephone	FAX Number	E-Mail Address	
(215) 575-2623	(215) 575-0856	tdrau@mdwcg.com	
Date	Attorney-at-law	Attorney for	
2/7/19	()/M	Timothy D. Rau	
(f) Standard Management -	- Cases that do not fall in	to any one of the other tracks.	<b>(</b>
commonly referred to a	s complex and that need s	tracks (a) through (d) that are special or intense management by sailed explanation of special	( )
(d) Asbestos – Cases involence exposure to asbestos.	ving claims for personal i	njury or property damage from	( )
(c) Arbitration – Cases requ	uired to be designated for	arbitration under Local Civil Rule 53.2.	( )
	requesting review of a denoting plaintiff Social Sec	ecision of the Secretary of Health curity Benefits.	( )
(a) Habeas Corpus – Cases	brought under 28 U.S.C.	§ 2241 through § 2255.	( )
SELECT ONE OF THE F	OLLOWING CASE MA	ANAGEMENT TRACKS:	
plaintiff shall complete a Cifiling the complaint and services of this form.) In the designation, that defendant the plaintiff and all other pattern which that defendant below.	ase Management Track Dive a copy on all defendants event that a defendant deshall, with its first appearanties, a Case Management ieves the case should be a		me of everse g said eve on
M.V. YM UPSURGENCE, in rem., BDP INTERÌ AKTIENGESSELLSHAFT, in personam	NATIONAL and HAPAG-LLOYD :	NO.	
v.	; ;		
ZURICH AMERICAN INSURANCE COMPAN	Y a/s/o BASF CORPORATION :	CIVIL ACTION	

(Civ. 660) 10/02

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

ZURICH AMERICAN INSURANCE COMPANY: a/s/o BASF CORPORATION, :

**CIVIL ACTION** 

Plaintiff,

NO.

v.

M.V. YM UPSURGENCE, in rem, BDP INTERNATIONAL and HAPAG-LLOYD AKTIENGESSELLSHAFT, in personam,

Defendants.

**COMPLAINT** 

Plaintiff, by its attorneys, MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN, alleges upon information and belief, as follows:

### **JURISDICTION**

- 1. All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.
- 2. This Court has personal jurisdiction over the Defendants, and venue is proper by reason of Defendants' regular and systematic contacts with the Commonwealth of Pennsylvania and by reason of the forum selection clause contained in the shipping contract between BASF Corporation and BDP International, which specifies that disputes under said contract are subject to the jurisdiction of the courts in the Commonwealth of Pennsylvania.

### **PARTIES**

3. At and during all the times hereinafter mentioned, Plaintiff had and now has the legal status and principal office and place of business stated in Schedule "A", hereto annexed, and by this reference made a part hereof.

### **FACTS**

- 4. At and during all the times hereinafter mentioned, Defendants had and now have the legal status and office and place of business stated in Schedule "A", and were and now are engaged in business as a freight forwarder and as a common carrier of merchandise by water for hire, and owned, operated, managed, chartered and/or otherwise controlled the vessel above named as a common carrier of merchandise by water for hire.
- 5. At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.
- 6. On or about the date and at the port of shipment stated in Schedule "A", there was shipped by the shipper therein named and delivered to Defendants and the said vessel, as freight forwarders and common carriers, the shipment described in Schedule "A" then being in good order and condition, and Defendants and the said vessel then and there accepted said shipment so shipped and delivered to them, and in consideration of certain agreed freight and forwarding charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipments to the port of destination stated in Schedule "A", and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignees named in Schedule "A".

- 7. Thereafter, the said vessel arrived at the port of destination, where it and Defendants made delivery of the shipment, but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule "A", all in violation of Defendants' and the said vessel's obligations and duties as freight forwarders and common carriers of merchandise by water for hire.
- 8. Plaintiff was the shipper, consignee, owner or subrogated cargo insurer of the shipment described in Schedule "A" and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as its respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.
- 9. By reason of the premises, Plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$114,795.71.
  - 10. Plaintiff seeks damages including but not limited to the following:
    - a. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
    - b. That if Defendants cannot be found within this District, then all their property within this District as shall be described in Schedule "A", be attached in the sum of \$114,795,71, with interest thereon and costs, the sum sued for in this Complaint;
    - c. That Judgment may be entered in favor of Plaintiff against Defendants for the amount of Plaintiff's damages, together with interest and costs and the disbursements of this action;
    - d. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims, may issue against said vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matter aforesaid, and that this Court will be pleased to pronounce

judgment in favor of Plaintiff for its damages as aforesaid, with interest, costs and disbursements, and that the said vessel may be condemned and sold to pay therefore; and

e. That this Court will grant to Plaintiff such other and further relief as may be just and proper.

WHEREFORE, Plaintiff prays this Court enter judgment in their favor and against Defendants; that this Court decree payment by the Defendants in the sum of \$114,795.71 plus interest, costs and fees; and that Plaintiff has such other and further relief as in law and justice they may be entitled to receive.

Dated: 2/7//9

Respectfully submitted,

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

By:

TIMOTHY D. RAU 2000 Market Street, Suite 2300 Philadelphia, PA 19103

tdrau@mdwcg.com (215) 575-2600

(File No.: 13204.00177)

Attorney for Plaintiff, Zurich American Insurance Company a/s/o BASF Corporation

TO: BDP International 510 Walnut Street Philadelphia, PA 19106

> Hapag-Lloyd Aktiengessellshaft c/o Hapag-Lloyd (America) LLC 399 Hoes Lane Piscataway, NJ 08854

#### **SCHEDULE A**

# Plaintiff's Legal Status and Office and Place of Business:

Plaintiff, ZURICH AMERICAN INSURANCE COMPANY as subrogee of BASF CORPORATION was and now is a corporation organized and existing under and by virtue of the laws of the State of Illinois with an office and place of business at 1299 Zurich Way, Schaumberg, IL 60199.

# Defendants' Legal Status and Offices and Places of Business:

Defendant, BDP INTERNATIONAL was and now is a corporation or other business entity organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at 510 Walnut Street, Philadelphia, PA 19106.

Defendant, HAPAG-LLOYD A.G. was and now is a corporation or other business entity organized and existing under and by virtue of the laws of a foreign country, with an office and place of business in care of its United States agent, Hapag-Lloyd (America) LLC, 399 Hoes Lane, Piscataway, NJ 08854.

Vessel : M.V. YM UPSURGENCE

Hapag-Lloyd

Sea Waybill No. : HLCUBSC1712BFK06

BDP Export References : 2008043039; BDP US1206824813; C.H.B. No 4660

Container No. : CRLU1300940

Date of Shipment : January 12, 2018

Port of Loading : Norfolk, Virginia, USA

Port of Discharge : Shanghai, China

Date of Delivery : February 22, 2018

Shipper : BASF Corporation

Consignee : BASF Shanghai Coatings Co. Ltd.

Description : Electrocoat Paste in a reefer container

Nature : Shipment arrived frozen as the result of incorrect

temperature set on Container CRLU1300940

Amount : \$114,795.71

File No. : 13204.00177